

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the ) NOTICE OF AMENDMENT  
amendment of ARM 8.15.301 )  
pertaining to boiler operating )  
engineer license fees )

TO: All Concerned Persons

1. On October 21, 2004, the Department of Labor and Industry published MAR Notice No. 8-15-5 regarding the public hearing on the proposed amendment of the above-stated rule relating to boiler operating engineer license fees, at page 2501 of the 2004 Montana Administrative Register, issue no. 20.

2. On November 12, 2004, a public hearing was conducted in Helena, Montana, and numerous members of the public spoke at the public hearing. In addition, several written comments were received prior to the closing of the comment period. In all, 18 individuals commented on the proposed amendment.

3. The Department has thoroughly considered all of the comments made. A summary of the comments received and the Department's responses are as follows:

COMMENT 1: A commenter questioned why the Department needed to generate annual program revenue of \$110,000 when the program's budget was only \$28,000 a year.

RESPONSE 1: The budget for the boiler operating engineer program for fiscal year 2004 was \$129,936, not \$28,000. The budget for the boiler operating engineer program for fiscal year 2005 is \$134,361.

COMMENT 2: All but one of the commenters opposed the amount of the proposed fee increases. Many of the commenters stated that their renewal fees were being increased 150%.

RESPONSE 2: The budget for the boiler operating engineer program for fiscal year 2004 was \$129,936, not \$28,000. In fiscal year 2004, the Department received revenue for the boiler operating engineer program of only \$78,066. Accordingly, there was a deficit for fiscal year 2004 of \$51,870, roughly 40% of the budgeted amount. A similar deficit is projected for fiscal year 2005 unless license fees are increased. Section 50-74-309, MCA, requires that the Department set fees commensurate with the costs of administering the boiler operating engineer program.

However, as a result of the comments received, the Department re-calculated its revenue projections to determine whether the amount of the annual renewal fee could be reduced from the

proposed \$50 per year. The Department concludes that an annual renewal fee of \$45 per year will produce adequate revenue to sustain its operations and, over time, eliminate the existing program deficit. The Department has amended ARM 8.15.301 accordingly.

COMMENT 3: Jim Keane, Representative of House District 36 (Butte) stated that the fees should be \$80 for a First Class license, \$70 for a Second Class license, \$60 for a Third Class license, \$50 for an Agricultural license and the same for a Low Pressure and for a Traction license. He stated that annual renewals should be \$30 and \$30 to replace a lost license.

RESPONSE 3: The Department has calculated the revenue from the suggested fees as follows:

First Class applications: \$80 x 8 applicants =	\$	640
Second Class applications: \$70 x 3 applicants =		210
Third Class applications: \$60 x 30 applicants =		1,800
Agricultural applications: \$50 x 1 applicant =		50
Low Pressure applications: \$50 x 105 applicants =		5,250
Traction applications: \$50 x 1 applicant =		50
Annual renewals: \$30 x 3,350 applicants =		100,500
License replacement: \$30 x 6 requests =		180
annual license revenue:		\$112,035

As noted in Responses 1 and 2, the boiler operator licensing program budget for fiscal year 2004 was \$129,936, and for fiscal year 2005 is \$134,361. The fee amounts suggested by the commenter do not cover the program's operating costs. The Department concludes that pursuant to section 50-74-309, MCA, it must charge fees commensurate with costs.

COMMENT 4: Dick Tombrink, president of the Montana Steam Engineers, suggested that it might be appropriate for the Department to "go to a lifetime license where you charge, in the case of traction engines,..., maybe \$50 or \$100 upfront for a lifetime license, and that takes care of the rest of your life on it."

RESPONSE 4: The Department notes that section 50-74-313(1), MCA, requires the licenses of operating engineers to be renewed "at periodic intervals." The Department concludes that based upon that provision of law, the Department does not have the statutory authority to issue lifetime licenses to traction engine or other boiler operating engineers.

COMMENT 5: One commenter stated that a secretary with a computer and mailing machine could run the renewal process for a fraction of the total proposed revenue amount of \$175,000. The commenter asserted that the costs would be as follows:

Clerk	\$30,000
Computer	2,000

Mailing Machine	3,000
Postage	2,600
Envelopes and license blanks	<u>10,000</u>
Total	\$47,600

RESPONSE 5: While the commenter has taken into account some direct costs for the renewal process, there are other costs that the commenter has overlooked. The Department notes that in addition to the examination-related costs that are part of the boiler operating engineer licensing program, there are significant indirect costs associated with the program. Some of the indirect costs associated with the program include office rent, office fixtures and machinery, telephone service, computerized database system, including on-line licensee lookup information and on-line renewal, Internet connection for on-line information and services. Other indirect costs include employee training expenses and a proportionate share of management, legal and other support services expenses.

In addition to the direct and indirect costs attributable to license renewal, the program needs to generate sufficient revenue to repay the interagency loan that has covered the operating deficit identified in Response 2. The annual program revenue is estimated at \$161,040 overall, based on the lowered \$45 renewal fee. This will allow the program to pay back a loan that was issued to resolve FY 2004 shortfalls and maintain a budget that will meet expenses. The Department will review the program fees and lower them if appropriate once the loan has been paid back in full.

COMMENT 6: One commenter questioned a raise in the application fees for all classes of licenses. The commenter stated that the application cost was excessive if the applicant has to travel to Helena to take the exam.

RESPONSE 6: The Department has been working with local job services throughout Montana since spring of 2004 to allow approved examination applicants the option to sit for the examination at a local job service. The examinations are still offered in Helena the first Friday of each month, but the option of taking the examination at a local job service will continue.

COMMENT 7: A concern was raised concerning licensees on fixed incomes who just maintain the license for future work. The commenter suggested a maintenance fee for those who are still holding their license but not using it for actual income. In addition, the commenter went on to state that they were aware of the need for instructors for future training.

RESPONSE 7: State law does not currently allow for a retired or inactive status for boiler engineers licensees. Changes by the legislature would need to be made to accommodate this request. As far as training provided to

those trying to obtain any class of licensure, by state law they must gain such experience under the supervision of a licensed boiler operator with at least the same level or higher of the license being sought. If an applicant had provided time earned under a retired or inactive status licensee, their experience would not be acceptable. The Department concludes that, pursuant to section 50-74-309, MCA, it must charge fees commensurate with costs.

COMMENT 8: A comment was received that the higher classes of boiler operators could probably afford the increase in renewal fees while the lower licensing classes could not because of the differences in pay.

RESPONSE 8: The Department recognizes that boiler operators do get paid different pay scales, but services provided by the Department are uniform in nature and therefore all licensee renewals are set at the same rate. The Department concludes that pursuant to section 50-74-309, MCA, it must charge fees commensurate with its costs.

COMMENT 9: One commenter supported the proposed rule amendments.

RESPONSE 9: The Department acknowledges and appreciates the commenter's support.

4. After consideration of the comments, the Department has amended ARM 8.15.301 as proposed but with the following changes, deleted matter interlined, new matter underlined:

8.15.301 FEE SCHEDULE FOR BOILER OPERATING ENGINEERS

- (1) remains as proposed.
- (2) Annual renewal of license (all classes) ~~50~~ 45
- (3) through (5) remain as proposed.

AUTH: 50-74-101, MCA

IMP: 50-74-309, 50-74-313, MCA

DEPARTMENT OF LABOR AND INDUSTRY

/s/ WENDY J. KEATING

Wendy J. Keating Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER

Mark Cadwallader  
Alternate Rule Reviewer

Certified to the Secretary of State December 6, 2004